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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,561	08/05/2003	Paul Benjamin Abernathy	P07918US00/MP	7137
881	7590	08/24/2005	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/633,561	ABERNATHY, PAUL BENJAMIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary E. Elkins	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20030805</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 8, 13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 8, 13 and 15, “two opposing sides” is a double inclusion insofar as the elements are being reintroduced into the claims.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-7, 9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Steckert. Steckert discloses a container including a structure (4) defining a potential dispensing opening and including an openable line (3) defining a downwardly convex U-shaped path as claimed. No distinction is seen between the claimed container and that shown in Steckert as a result of the claimed intended use of the container to hold food packages, i.e. the container of Steckert is considered capable of holding and dispensing food packages.

4. Claims 1, 4, 5, 6, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritz et al. Fritz et al discloses a container including a structure (14) defining a potential dispensing opening and including an openable line (19) defining a downwardly extending U-shaped path as claimed. No distinction is seen between the claimed container and that shown in

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Fritz et al as a result of the claimed intended use of the container to hold food packages, i.e. the container of Fritz et al is considered capable of holding and dispensing food packages.

5. Claims 1, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Culbreth. Culbreth discloses a container including a structure (34) defining a potential dispensing opening and including an openable line (24, 26, 28) defining a downwardly extending U-shaped path as claimed. No distinction is seen between the claimed container and that shown in Culbreth as a result of the claimed intended use of the container to hold food packages, i.e. the container of Culbreth is considered capable of holding and dispensing food packages.

6. Claims 1, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Tiefry. Tiefry discloses a container including a structure (5) defining a potential dispensing opening and including an openable line defining a downwardly extending U-shaped path as claimed. No distinction is seen between the claimed container and that shown in Tiefry as a result of the claimed intended use of the container to hold food packages, i.e. the container of Tiefry is considered capable of holding and dispensing food packages.

7. Claims 1, 4-6, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Deger. Deger discloses a container including a structure (40) defining a potential dispensing opening and including an openable line defining a downwardly extending U-shaped path as claimed. No distinction is seen between the claimed container and that shown in Deger as a result of the claimed intended use of the container to hold food packages, i.e. the container of Deger is considered capable of holding and dispensing food packages.

8. Claims 1, 2, 4-7, 9-11, 14, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Flood. Flood discloses a container including a structure (27) defining a potential

dispensing opening and including an openable line (24, 26, 28) defining a downwardly extending U-shaped path as claimed. It is noted that Flood discloses food packages as one possible content to be dispensed from the container.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Fritz et al, Culbreth, Tiefry or Deger. Each of Fritz et al, Culbreth, Tiefry and Deger discloses all structure of the claimed container except formation of the openable line with a downward convex shape. It would have been obvious to make the opening line in any one of Fritz et al, Culbreth, Tiefry or Deger with a downward convex shape as a mere arbitrary change in the shape or appearance of the opening line. No functional distinction is seen nor has any functional distinction been made by Applicant between the claimed opening line shape and that shown in any one of Fritz et al, Culbreth, Tiefry or Deger. Design patents are available to patent differences based solely upon appearance.

11. Claims 3, 12 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Flood. Flood discloses all structure of the claimed container except formation of the openable line with a downward convex shape. It would have been obvious to make the opening line in Flood with a downward convex shape as a mere arbitrary change in the shape or appearance of the opening line. No functional distinction is seen nor has any functional distinction been made by Applicant

between the claimed opening line shape and that shown shown in Flood. Design patents are available to patent differences based solely upon appearance.

12. Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Fritz et al, Culbreth, Tiefry or Deger, each in view of either Lozaun or Hurray et al. Each of Fritz et al, Culbreth, Tiefry and Deger discloses all structure of the claimed container except a structure defining a potential handle opening in opposing sides of the container. Each of Lozaun and Hurray et al teaches that it is known to make a box with potential opposing handle openings (28; 125, 126, respectively) to facilitate carrying the container. It would have been obvious to form opposing potential handle openings in the container in any one of Fritz et al, Culbreth, Tiefry or Deger as taught by either Lozaun or Hurray et al to facilitate carrying of the container.

Handle openings in the sidewalls of boxes are well known in this art.

13. Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flood in view of either Lozaun or Hurray et al. Flood discloses all structure of the claimed container except a structure defining a potential handle opening in opposing sides of the container. Each of Lozaun and Hurray et al teaches that it is known to make a box with potential opposing handle openings (28; 125, 126, respectively) to facilitate carrying the container. It would have been obvious to form opposing potential handle openings in the container in Flood as taught by either Lozaun or Hurray et al to facilitate carrying of the container. Handle openings in the sidewalls of boxes are well known in this art.

### ***Conclusion***

The remaining cited prior art is illustrative of the general state of the art.

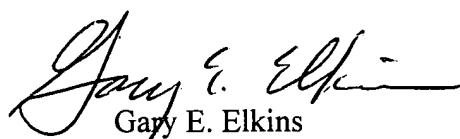
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In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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22 August 2005